No. 91-538

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

FORSYTH COUNTY, GEORGIA,
Petitioner,

v.

THE NATIONALIST MOVEMENT,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Whether the First Amendment to the United States Constitution limits the amount of a license fee assessed pursuant to the provisions of a county parade ordinance to a nominal sum or whether the amount of the license fee may take into account the actual expense incident to the administration of the ordinance and the maintenance of public order in the licensed activity, up to a maximum sum of $1,000.00 per day of the activity?

LIST OF PARTIES IN COURT BELOW

The Nationalist Movement
Forsyth County, Georgia
City of Cumming, Georgia
Forsyth County Board of Education

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Nationalist Movement v. City of Cumming, Forsyth County, Georgia, and Forsyth County Board of Education, C.A. File No. 2:89-CV-06-WCO (N.D.Ga., January 23, 1989).

STATEMENT OF GROUNDS ON WHICH JURISDICTION IS INVOKED

Jurisdiction is invoked pursuant to the provisions of 28 U.S.C. § 1254(1), as Petitioner Forsyth County, Georgia is a party to a civil case where an adverse judgment was rendered by the United States Court of Appeals for the Eleventh Circuit on July 5, 1991. Petition for Certiorari was filed September 27, 1991.

CONSTITUTIONAL PROVISIONS AND LOCAL ORDINANCES

Amendment I to the Constitution of the United States:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Section 3, subsection (6) of Forsyth County Ordinance No. 34, as amended:

(6) Every private organization or group of private persons required to procure a permit under the provisions of this Ordinance shall pay in advance for such permit, for the use of the County, a sum not more than $1,000.00 for each day such parade, procession, or open air public meeting shall take place. The Administrator shall adjust the amount to be paid in order to meet the expense incident to the administration of the Ordinance and to the maintenance of public order in the matter licensed. In no event shall the Administrator calculate the amount of the permit fee by considering said fee as a revenue tax.

The full text of Ordinance 34 is attached at Petition for Certiorari Appendix ("P.C. App.") @ 98-126.

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BRIEF FOR PETITIONER

STATEMENT OF THE CASE

At issue in this case is the constitutionality of a county ordinance designed to defray the costs of parades and rallies held on public property. The particular ordinance at issue, Ordinance 34, was adopted in direct response to enormous expenses incurred by Petitioner

Forsyth County, Georgia, in administering and policing prior events. In essence, Ordinance 34 imposes a limited user fee for parades and rallies held on public property. The amount of the fee is calculated solely by reference to content-neutral factors: the additional costs actually incurred by the county in administering and policing the event. In addition, regardless of the actual cost incurred, the fee charged may not exceed $1,000.00 per day.

Respondent The Nationalist Movement ("the Movement"), a white supremacist group, challenged the constitutionality of Ordinance 34 after being assessed a $100.00 fee for a permit for use of the Forsyth County Courthouse steps for a rally against the Martin Luther King, Jr. holiday. The Movement claimed that the fee provision of Ordinance 34 violated the First Amendment both in its application (i.e. the actual $100.00 fee charged to Respondent) and on its face (i.e. the potential $1,000.00 fee). The district court rejected the Movement's challenge, finding that Ordinance 34 was constitutional both as applied and on its face. P.C. App. @ 11-14. The court of appeals reversed, concluding that the First Amendment permitted the assessment of only a nominal fee under a county parade ordinance and that Ordinance 34's potential $1,000.00 fee was unconstitutional on its face. P.C. App. @ 31.

1. STATEMENT OF FACTS.

A. The Origin of Ordinance 34.

In January of 1987, Forsyth County had no parade ordinance, because prior to 1987 the only parade of any

size in Forsyth County was the annual 4th of July parade, which required little administrative time or security. Two Saturdays in 1987 changed that forever.

On Saturday, January 17, 1987, Hosea Williams, an Atlanta civil rights personality, led approximately 90 marchers to Forsyth County to stage a "brotherhood anti-intimidation" demonstration. P.C. App. @ 75-80. Some 400 counter-demonstrators threw bottles and rocks at the marchers and Mr. Williams promised a return demonstration. Id. That demonstration occurred on the following Saturday, January 24, 1987, when approximately 20,000 marchers joined Mr. Williams for his return demonstration. P.C. App. @ 81-94. Mr. Williams and the marchers were again met by approximately 1000 counter-demonstrators who, during this demonstration, were controlled by more than 1700 National Guardsmen activated to police the march and maintain public order. Id.

In response to Mr. Williams' activities, the Movement's predecessor and affiliate, The Forsyth County Defense League ("the Defense League"), (R-3-35-37; Hg. Tr. @ 35-37), began to voice its white supremacist views by staging a rally on the Forsyth County Courthouse steps in March, 1987. P.C. App. @ 137-139. Approximately 125 participants rallied with the Defense League and were met by over 200 counter-demonstrators. Id.

B. The Movement.

Based on stricken testimony [1] before the District Court and upon assertions from its counsel and chief executive officer, Richard Barrett, [2] the Movement appears to be a corporation which: organizes public speeches, forums and debates; is supported by donations; has no paid members or officials; has no income which inures to the benefit of its members or officials; has income of approximately $300.00 per month expended primarily for postage, printing and communication of its message; has physical assets encompassing flags, supplies and printed material of nominal value; and had cash on hand as of January 19, 1989, of less than $100.00. See The Movement's Petition for Certiorari in The Nationalist Movement v. The City of Cumming, Forsyth County, Georgia and Forsyth County Board of Education, Case No. 90-933, cert. denied, January 14, 1991, @ 5; (R-3-54-56; Hg. Tr. @ 54-56). The Movement or the Defense League has demonstrated in Forsyth County and Atlanta, Georgia on four separate occasions: March 14, 1987 (P.C. App. @ 137-140), January 23, 1988 (P.C. App. @ 144-146), during the 1988 National Democratic Convention in Atlanta (R-3-39; Hg. Tr. @ 59) and in January 1989, at the State Capitol in Atlanta (R-3-61; Hg. Tr. @ 61). The Movement assumably has held rallies in locales other than Georgia (R-3-62; Hg. Tr. @ 62). The Movement's message, succinctly put, is "to provide for majority rule in the United States." (R-3-63; Hg. Tr. @ 63).

During the eventful year of 1987, the Movement or the affiliated Defense League spread their message in Forsyth County without hindrance - indeed, with the cooperation Forsyth County affords all of its citizens. The community room at the Forsyth County Courthouse was made available for meetings and debates. P.C. App. @ 130, 132, 157, 159, 160, 171, 177, 180, 186. Newsletters were circulated. P.C. App. @ 129, 174, 184. Meetings were held at private homes, P.C. App. @ 151, 167, and at other public places within Forsyth County. P.C. App. @ 174. Commercial ventures designed to spread the Movement's message were initiated. P.C. App. @ 130, 175. Thus, the Movement and its affiliate have been and are free to pursue "ample alternative channels for communication of the[ir] information", Clark v. Community for Creative Non-violence, 468 U.S. 288, 293

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1 The testimony was stricken after the district court determined that the Movement's counsel's use of a straw man as "Acting Secretary" of the Movement to facilitate the presentation of evidence constituted an attempt to perpetuate a fraud upon the court. P.C. App. @ 6. This finding of fraud on the Court was affirmed by the Eleventh Circuit. P.C. App. @ 40.

2 "Barrett is a Founder and Principal in the Nationalist Movement which has been a highly visible and extremely controversial political group. While its membership is apparently small, its radical politics has attracted much attention and it has vigorously asserted constitutional rights under the First Amendment as in the matter brought before Judge O'Kelley." In Re: Richard Barrett, 260 Ga. 903, 903, 401 S.E. 2d 255, 256 (1991).

(1984), in both public and private facilities in Forsyth County.

C. The Enactment of Ordinance 34.

As a direct result of the cost incurred by the first two demonstrations, P.C. App. @ 75-94, the second of which cost local and state government almost $700,000.00 to police, P.C. App. @ 95-97, the Forsyth County, Georgia, Board of Commissioners ("the Board") enacted Ordinance 34 on January 27, 1987, "to provide for the issuance of permits for parades, assemblies, demonstrations, road closings, and other uses of public property and roads by private organizations and groups of private persons for private purposes...." P.C. App. @ 98. The Board was authorized by state law, Ga. Code Ann. § 36-1-20 (Michie 1987), to enact the ordinance. The Board recognized in findings accompanying the enactment of Ordinance 34 that "private organizations and groups of private persons have from time to time sought to use public property and public roads within the jurisdiction of the Board of Commissioners of Forsyth County for private purposes...and [that] such uses have included parades, assemblies, demonstrations, road closings, and other related activities...." P.C. App. @ 99. The Board also recognized that "it is in the public interest that such uses not interfere unduly with the right of citizens not participating therein nor endanger the public safety nor obstruct the orderly flow of traffic." P.C. App. @ 100. Most importantly, the Board recognized from vivid experience that "the cost of necessary and

reasonable protection of persons participating in or observing said [activities] exceeds the usual and normal cost of law enforcement for which those participating should be held accountable and responsible...." P.C. App. @ 100. Finally, the Board noted that the cost of additional protection could be estimated and that any surplus collected could be refunded to those seeking a permit. P.C. App. @ 100.

Ordinance 34 was amended on June 8, 1987 after the initial three demonstrations to provide a maximum amount on the fee that might be assessed by the County Administrator. The purpose of the amendment was to allay concerns regarding the constitutionality of the ordinance. P.C. App. @ 118. Sub-section (6) of section 3 of amended Ordinance 34 capped the amount of such a fee at "not more than $1,000.00 for each day such [licensed activities] shall take place." P.C. App. @ 119. In addition, the County Administrator was empowered by the amended ordinance to "adjust the amount to be paid in order to meet the expense incident to the administration of the Ordinance and to the maintenance of public order in the matter licensed." Id. The quoted language was borrowed directly from this Court's opinion in Cox v. New Hampshire, 312 U.S. 569, 577 (1941), to ensure that Ordinance 34 came well within the limits allowed by this Court's pronouncements of First Amendment law.

D. The Issuance of the Movement's Permit.

This action arose as a result of a permit issued to the Movement in 1989 pursuant to the provisions of amended Ordinance 34. The Movement sought a permit to conduct a parade and demonstration expressing opposition to the Martin Luther King, Jr. federal holiday. P.C. App. @ 18. Approximately 200 participants were anticipated. P.C. App. @ 16. The Movement proposed to assemble in the local high school parking lot and march two blocks along a city street to a proposed rally on the county courthouse steps. P.C. App. @ 19. After one and one half to two hours of speeches, the demonstrators were to march back to the school and caravan to downtown Atlanta for a rally at the State Capitol. Id. The permit from the county dealt only with the rally on the courthouse steps. Separate applications were submitted to the Board of Education and the City of Cumming for the use of the school parking lot and city street, respectively. P.C. App. @ 19.

The permit was issued by the Forsyth County Administrator contingent upon payment of a $100.00 permit fee. [3] The amount of the fee resulted from a

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[3]
Q. Mr. Major, you have been presented with an application from the Nationalist Movement for an assembly on the courthouse grounds, it that correct?
A. Yes, sir.

Q. What has been your action with regard to that request?

deliberate undervaluation of the expense incurred by a single county official, the County Administrator, in administering the ordinance. [4] The amount of the fee

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A. We issued the permit on December the 30th with the condition that they pay the $100.00 application fee and that the audio systems be at a low volume as to not -- to disturb the businesses surrounding the courthouse square and the convalescent home residents and the member -- people visiting the convalescent home directly across the street from the courthouse. (R-3-134; Hg. Tr. @ 134).

[4]
Q. So, if you earn $1,000.00 a week, what's your hourly -- how many hours are you supposed to work a week?
A. Well, it's based on a 40-hour work week.

Q. It's based on a 40-hour work week. So, 40 into 1000 is $25.00 an hour?
A. Yes, sir.

Q. Is basically what you get paid?
A. Yes, sir.

Q. And you say at the time you set the $100 fee you had approximately 10 hours effort in this?
A. Yes, sir.

Q. So, you deliberately undervalued your time, is that correct?
A. Yes, sir.

Q. Had you studied whether or not any fee had been set in the past with regard to the Nationalist Movement or the Forsyth County Defense League or other entities in which Mr. Barrett has been involved in aiding yourself in setting this fee?
A. Yes, sir. I believe I did review an application that was submitted the prior year. I believe it had the $100 fee on it also.

did not include any calculation whatsoever for expenses incurred in the "maintenance of public order" by law enforcement authorities who would police the rally. [5] The Movement refused to pay the fee, did not

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Q. So, this fee is no different than the previous application fee required by a previous administrator?
A. No, sir.
R-3-137-138 (Hg. Tr. @ 137-138).

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Q. Now, prior to setting the $100 fee did you and I have discussion about how much that fee should be?
A. Yes, sir. I believe we had a meeting on 12-28, 12- 29, sir.

Q. What do you recollect about how we were to come up with the amount of the fee?
A. You advised me to establish a reasonable fee based on the contents of the actual work that I personally had knowledge of.

Q. Does anybody else deal with the applications for parade permits in Forsyth County?
A. There was other people involved other than myself.

Q. Who?
A. Yes, sir.

Q. Who?
A. You've got the clerical support, staff people, you've got law enforcement agencies.

Q. Have you calculated in any credit for the time spent by law enforcement authorities to prepare Forsyth County, or is this $100 purely based on your time and your clerical support staff?
A. It's purely based upon my time, sir.
(R-3-136; Hg. Tr. @ 136); see also (R-3-135; Hg. Tr. @ 135); P.C. App. @ 147-150.

demonstrate, and brought this action in the United States District Court for the Northern District of Georgia in Gainesville. Joint Appendix @ 1; Respondents Brief in Opposition to Petition for Certiorari @ 3.

2. COURSE OF PROCEEDINGS AND DISPOSITION BELOW.

A. The District Court Proceedings.

On January 19, 1989, the Movement filed suit in the United States District Court, Northern District of Georgia, Gainesville Division, against Forsyth County, Georgia, seeking a temporary restraining order enjoining Forsyth County from interfering with the Movement's plans to conduct a rally on the Forsyth County Courthouse grounds in Cumming, Forsyth County, Georgia, on January 21, 1989. R-1-1. The Movement also requested a declaratory judgment that Ordinance 34 was unconstitutional because it charged an administrative permit fee to those desiring to parade and rally in Forsyth County. R-1-1. Jurisdiction in the district court was based upon 28 U.S.C. §§ 1331,1343, 2201, and 2202.

After a hearing on the merits, the district court (O'Kelley, C. J.) held that Ordinance 34 was neither unconstitutional on its face nor as applied to the Movement and denied the request for injunctive and declaratory relief. P.C. App. @ 11-14. The district court explained that in order to succeed with a facial challenge to Ordinance 34, the Movement must establish that the ordinance is either "unconstitutional in every conceivable

application or that it seeks to prohibit such a broad range of protected conduct that it is overbroad." P.C. App. @ 11- 12. A statute is overbroad "when there is a realistic danger that it will significantly compromise recognized First Amendment protection of parties not before the court." Id. at 12. These factors were not established by the Movement. Overall, the district court viewed Ordinance 34 as a reasonable regulation of time, place and manner. Relying on Cox, 312 U.S. at 576, the district court reasoned that the imposition of a limited user fee to meet the actual cost of processing an application for a parade permit was quite consistent with the First Amendment and did not render Ordinance 34 unconstitutional on its face. The district court also concluded that, in light of the efforts expended by the county in processing the Movement's application for a permit, Ordinance 34's $100.00 content-neutral, cost-based fee did not, as applied, violate the First Amendment rights of the Movement.

B. The Court of Appeals Proceedings.

The Movement noted its appeal on May 17, 1989. R-2-22. The Eleventh Circuit Court of Appeals reversed, concluding that the ordinance was facially unconstitutional. In so ruling, the Eleventh Circuit relied upon its own recent circuit precedent, Central Florida Nuclear Freeze Campaign v. Walsh, 774 F.2d 1515, 1521 (11th Cir. 1985), cert. denied, 475 U.S. 1120 (1986), which limited the authority of local government to impose user fees in the context of marches and rallies

using public facilities and thoroughfares. The essence of the Central Florida decision was that such user fees could not exceed a "nominal amount." The Eleventh Circuit did not define the "nominal amount" concept in Central Florida or in its opinion in this case. Presumably costs beyond that nominal amount are to be absorbed by local government since such costs may not be passed onto the persons seeking the use of the public forum. Thus, according to the Eleventh Circuit, it is unacceptable that a user fee is assessed on a content-neutral, actual-cost basis. Such a fee must also satisfy certain normative requirements with respect to the size of the fee. The Nationalist Movement v. The City of Cumming, 913 F.2d 885, 891 (11th Cir. 1990); P.C. App. @ 31.

Applying the rule of Central Florida to Ordinance 34, the Eleventh Circuit concluded that the potential $1,000.00 fee was not, regardless of the size of the proposed event and regardless of the actual cost to the County, a nominal amount. The Eleventh Circuit did not explain the basis for this conclusion. Rather, it simply concluded that the $1,000.00 maximum amount was "enough to hold" the ordinance unconstitutional on its face.[6]

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6 The Court did not address the Movement's argument concerning Ordinance 34's indigency provisions or its argument that the Ordinance was applied in an unconstitutional manner. P.C. App. @ 31, fns. 8 & 10.

Circuit Judge Fay concurred specially. He noted Judge Henderson's concurrence in Central Florida and agreed with Judge Henderson that the majority in Central Florida misread this Court's pronouncements in Cox and Murdock v. Pennsylvania, 319 U.S. 105 (1943), as prohibiting the assessment of fees based upon the cost of ensuring public safety and keeping the peace. P.C. App. @ 42. While recognizing his obligation to concur in the judgment in this case based on binding circuit precedent in Central Florida, Judge Fay suggested a modification of the Central Florida decision by the en banc court. Id. He continued by noting that "[a] $1,000.00 fee for the costs associated with processing the application and policing a parade and rally designed to use the city's main street and the county courthouse square for a period of one and a half to two hours strikes me as being extremely nominal." P.C. App. @ 43. Judge Fay concluded by citing Kaplan v. County of Los Angeles, 894 F.2d 1076, 1081 (9th Cir.) cert. denied, 110 S.Ct. 2590 (1990), in which a panel of the Ninth Circuit approved "reasonable" charges that "fairly reflect costs incurred by the municipality in connection with an activity involving expression."

Forsyth County filed its Suggestion of Rehearing En Banc on October 22, 1990, which was granted by the Eleventh Circuit on December 18, 1990, and which vacated the panel decision. Nationalist Movement v. City of Cumming, 921 F.2d 1125 (11th Cir. 1990); P.C. App. @ 47. On July 5, 1991, the en banc Eleventh

Circuit reinstated the panel decision. Nationalist Movement v. City of Cumming, 934 F.2d 1482 (11th Cir. 1991); P.C. App. @ 47-48.

Three judges dissented from the panel decision for the reasons set forth in Judge Fay's special concurrence. P.C. App. @ 74. Two additional judges dissented from the panel holding that Ordinance 34 was facially invalid, P.C. App. @ 48, but concurred in the panel holding that this Court's decisions in Cox and Murdock limit fees to a nominal amount. P.C. App. @ 66. Thus, nine judges of the Eleventh Circuit interpret Cox and Murdock to authorize only nominal fees and four (including Senior Judge Henderson, who concurred in Central Florida) do not.

Chief Judge Tjoflat issued a separate opinion concurring in part and dissenting in part from the majority opinion. P.C. App. @ 48. He viewed Ordinance 34 as facially valid but concluded that a remand was appropriate to determine if the actual $100.00 fee assessed was nominal "relative to the necessary fees incurred by the County and the applicant's resources." P.C. App. @ 73. Judge Tjoflat held that there was no error in the district court's finding that the fee was not assessed based on the content of the Movement's message but that the district court failed to determine whether Ordinance 34 provided for a nominal fee. P.C. App. @ 72.

The Petition for Certiorari was filed in this Court on September 27, 1991, and granted on January 10, 1992.

SUMMARY OF THE ARGUMENT

Respondent Nationalist Movement lacks standing to mount a facial challenge to Ordinance 34. The Movement's challenge complains of lack of adequate discretionary standards within Ordinance 34 which would guard against misuse of the ordinance fee by the Forsyth County Administrator. Because such an overbreadth challenge presents an opportunity for a litigant in a First Amendment case to avoid normal standing requirements, such a challenge is not generally allowed when a limiting construction can be placed on an ordinance attacked as overbroad.

Ordinance 34 was written to comply with this Court's decision in Cox v. New Hampshire, 312 U.S. 569 (1941), and contains the limiting construction placed on the Cox statute when that statute was reviewed by the New Hampshire Supreme Court and approved by this Court. Because this limiting construction found in Cox has been explicitly written into Ordinance 34, an overbreadth challenge is inappropriate and the Movement lacks standing to challenge the Ordinance's facial constitutionality.

In the First Amendment context, a properly limited license fee related to administration of the Ordinance and the maintenance of public order represents an accommodation of freedom of speech with the needs of the community to protect that speech and not unduly burden the public fisc. No decision by this Court has limited user fees to a nominal amount, and the

Eleventh Circuit's interpretation of this Court's decision in Murdock v. Pennsylvania, 319 U.S. 105 (1943), to the contrary is erroneous. That case was concerned with a tax on the privilege to engage in First Amendment activity and the distinction between such a tax and a user fee was recognized by this Court in Murdock.

The Eleventh Circuit is the only Circuit Court of Appeals which has failed to recognize the distinction between the tax in Murdock and the user fee in Cox. Furthermore, the Eleventh Circuit has without any apparent basis taken away the right of local government to obtain reimbursement for administration and policing costs which are incurred in protecting those using government property for expression. The application of the Ordinance before the Court was reasonable, was not based on the content of the Movement's message, and was in express compliance with this Court's decision in Cox.

Ordinance 34 is a classic application of user fees which are permitted by the Constitution in various contexts, including intergovernmental immunities, the dormant Commerce Clause and First Amendment cases. Such user fees have been distinguished in each of these constitutional settings from taxes because such user fees, regardless of their label, are permitted as long as the fees do not discriminate against constitutionally protected activities, are based on a fair approximation of the use caused by the activity, and are structured to produce revenues that would not exceed the cost to the

government for the benefits which it supplies. These considerations distinguish user fees from taxes which are simply revenue raising devices which may not be assessed for the privilege of engaging in constitutionally protected activities.

Neither Ordinance 34 nor this Court's opinion in Cox are out of line with more recent time, place and manner decisions of this Court. There is no serious argument that the fee is other than content-neutral, that it does not serve a significant government interest (i.e. protecting the public fisc and public order), or that alternative channels of communication were not and are not available to the Movement to spread its message. Therefore, the fee is a legitimate element in the County's exercise of its police power to impose reasonable restrictions on the time, place and manner the Movement may exercise its First Amendment privilege. Ward v. Rock Against Racism, 491 U.S. 781 (1989).

ARGUMENT

I. THE MOVEMENT LACKS STANDING TO MOUNT A FACIAL CHALLENGE TO THE ORDINANCE BECAUSE ORDINANCE 34 IS NOT OVERBROAD.

A. Facial Overbreadth Claims Attacking Statutes Which Purport to Regulate Time, Place, and Manner Restrictions Fail Where a Limiting Construction of the Statute Is Possible.

The Movement attacks Ordinance 34 as facially unconstitutional because it allegedly does not "prescribe carefully tailored standards for the Administrator when he (1) reviews applications for permits and (2) sets permit fees." P.C. App. @ 49. An overbreadth claim represents an exception to this Court's ordinary requirement that the party attacking a statute have standing to complain about the harm done by the statute as applied to him. See generally, Broadrick v. Oklahoma, 413 U.S. 601, 610 (1973) and cases cited therein. The exception allows a First Amendment litigant to challenge a statute without the requirement that the litigant show harm by the application of the statute. Id. at 612. But the facial overbreadth doctrine is not to be "involved when a limiting construction has been or could be placed on the challenged statute." Id. at 613, citing, inter alia, Cox. As Justice White has so succinctly put it,

> Application of the overbreadth doctrine in this manner is, manifestly, strong medicine. It has been employed by the Court sparingly and only as a last resort.

Broadrick, 413 U.S. at 613.

For that reason, the Movement is required to show that Ordinance 34 is "substantially overbroad" by demonstrating that a "substantial number of instances exist in which the law cannot be applied constitutionally." New York State Club Association v. City of New York, 487 U.S. 1, 14 (1988). As discussed below, Ordinance 34 contains strict limitations and a $1,000.00 limit which affirmatively negate such a showing.

B. Ordinance 34 Is Not Facially Overbroad Because It Incorporates the Very Limitations Approved by This Court in Cox.

The relevant language of Ordinance 34 is substantially analogous to the language in the statute at issue in Cox. Section 3(6) of Ordinance 34 states:

> Every private organization or group of private persons required to procure a permit under the provisions of this Ordinance shall pay in advance for such permit, for the use of the County, a sum not more than $1,000.00 for each day such parade, procession, or open air meeting shall take place.

The analogous language from the New Hampshire statute at issue in Cox states:

> Every licensee shall pay in advance for such license, for the use of the city or town, a sum not more than three hundred dollars for each day such licensee shall perform or exhibit, or such parade, procession or open air public meeting shall take place...N.H. P.L., Chap. 145, Section 4.

The Supreme Court of New Hampshire construed its statute to be a fee "to meet the expense incident to the administration of the act and to the maintenance of public order in the matter licensed." State v. Cox, 91 N.H. 137, 16 A.2d 508, 513 (1940), cited in, Cox, 312 U.S. at 577. Ordinance 34 incorporates this limiting construction from Cox with the following language in Section 3(6):

> The Administrator shall adjust the amount to be paid in order to meet the expense incident to the administration of the Ordinance and to the maintenance of public order in the matter licensed.

Because New Hampshire's statute passed constitutional overbreadth muster in Cox based on the Supreme Court of New Hampshire's limiting construction, and that limiting construction has been explicitly incorporated into Ordinance 34, only an express overruling of Cox would allow the Eleventh Circuit's decision in this case to stand.

This is especially so when the "First Amendment overbreadth doctrine allows a challenge only if the law is substantially overbroad." Brockett v. Spokane Arcades, Inc., 472 U.S. 491, 508 (1985) (O'Connor, J., concurring), citing, City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 798-801 (1984) (emphasis added). Given the express limitations within Ordinance 34 combined with the $1,000.00 limit, the Movement cannot reasonably argue that a "substantial number of instances exist in which the law cannot be applied constitutionally." New York State Club Association, 487 U.S. at 14 (1987) (emphasis added). Ordinance 34 operates within narrow confines and simply does not allow the type of unbridled discretion which can support a valid First Amendment attack. See FW/PBS, Inc. v. City of Dallas, 493 U.S. 215 (1990).

Accordingly, the County respectfully requests that this Court reverse the Court of Appeals' holding that Ordinance 34 is unconstitutional on its face and find that the Movement lacks standing to mount an overbreadth challenge because of adequate standards within Ordinance 34 to guide the County Administrator in setting a fee.

II. PERMIT FEES RELATED TO EXPENSE INCIDENT TO ADMINISTRATION OF THE ORDINANCE AND THE MAINTENANCE OF PUBLIC ORDER ARE PROPER TIME, PLACE AND MANNER RESTRICTIONS.

A. Cox Strikes the Proper Balance Between Freedom of Speech and the Reasonable Interests of the Community.

In one of the early cases in which this Court defined the rights of its citizens to utilize public areas to express views on issues of the day, the Court made it clear that the exercise of that right has limits which must be regulated in the interest of all.

> Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied.

Hague v. C.I.O., 307 U.S. 496, 515-516

(1939) (Plurality Op., Robert, J.) (emphasis added).

In 1941, the Court applied Justice Robert's reasoning to a New Hampshire statute which allowed cities to "investigate and decide the question of granting licenses" and to "specify the day and the hour of [a] permit to perform [licensed activities]." Cox, 312 U.S. at 571-572, fn. 1. The statute also permitted municipalities to require a licensee and to "pay in advance for such license, for the use of the city or town, a sum not more than three hundred dollars for each day [of the activity]." Id. at 572, fn. 1 (emphasis added). In affirming convictions of Jehovah's Witnesses who failed to apply for a permit before they engaged in their activities, this Court stated:

> If a municipality has authority to control the use of its public street for parades or processions, as it undoubtedly has, it cannot be denied authority to give consideration, without unfair discrimination, to time, place and manner in relation the other proper uses of the streets.

Id. at 576 (emphasis added).

The Court in Cox then addressed the license fee and noted that the Supreme Court of New Hampshire observed that the "range [of the fee] is from $300 to a nominal amount[,]" unlike the Eleventh Circuit, clearly recognizing a distinction between $300 and a "nominal

amount." [7] State v. Cox, 91 N.H. 137, 16 A.2d 508, 513 (1940); Cox, 312 U.S. at 576. The New Hampshire court also noted that the license fee took into account the extent of public expense anticipated by the activity for which the fee was requested and that the fee was "not a revenue tax, but one to meet the expense incident to the administration of the act and to the maintenance of public order in the matter licensed." State v. Cox, 16 A2d at 513; Cox, 312 U.S. at 577. In concluding this Court's review of the fee aspect, Chief Justice Hughes stated:

> There is nothing contrary to the Constitution in the charge of a fee limited to the purpose stated. ...[W]e perceive no constitutional ground for denying to local governments that flexibility of adjustment of fees which in the light of varying conditions would tend to conserve rather than impair the liberty sought.

Cox, 312 U.S. at 577.

The decision in Cox by this Court recognizes that when local government provides venues for expressive activity, the government incurs costs for policing those activities so that they may safely occur. The Court also implicitly recognized that to properly police such an

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7 Three hundred dollars in 1953, the earliest year the Consumer Price Index was calculated, equalled $1,329.12 in 1989, the time the Movement applied for its permit under Ordinance 34. CPI Detailed Report, January, 1989, U.S. Dept. of Labor Statistics, Table 3 at 13.

activity, the local government must have adequate information to make determinations as to the extent of traffic control, security personnel, sanitary facilities and other like concerns in order to make an intelligent choice when it devises a plan for accommodating the users of government property.

In order to obtain that information, a licensing procedure is necessary. Such a procedure necessarily implies the need to issue permits as a symbol that appropriate information has been provided and responsible governmental choices have been made in response to the application for a permit. The process of receiving the application, processing it, coordinating it with others involved in devising appropriate plans for handling the requested activities, and issuing the permit itself takes up time and causes expense to any government administering such a licensing scheme. The Court simply has recognized this legitimate approach and its attendant costs and has mandated that government may recover those costs as long as the rights protected by the Constitution remain unimpaired.

The County simply asks this Court to maintain what this Court asserted in 1941: that government has certain responsibilities to those wishing to utilize its property for expressive purposes and, similarly, those wishing to express themselves have a responsibility to share the expense, within reasonable limits, as long as that fee is directly related to the costs which they cause

government to incur. Shared responsibility underlies the entire discussion, as it should.

B. Ordinance 34 Incorporates Virtually the Same Time, Place and Manner Restrictions as Those Approved in Cox.

This Court's opinion in Cox created a benchmark in the evolution of the time, place and manner doctrine when it stated that a local government "cannot be denied authority to give consideration, without unfair discrimination, to time, place and manner in relation to the...proper uses of the streets." Id. at 576. The language in Cox concerning unfair discrimination has matured as shown by one of this Court's most recent enunciations of the time, place and manner doctrine:

> [E]ven in a public forum the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions "are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information."

Ward, 491 U.S. at 791 (1989) (citations omitted)

Applying the analysis of Ward to Ordinance 34, it is clear that the fee aspect of the ordinance is content-neutral. The enactment of the fee aspect of Ordinance 34 resulted from Forsyth County's concern

with the cost of the repeated demonstrations in the county which were plundering its treasury. See, Statement of Facts, supra at 6. Thus, the "predominate" and, indeed, "motivating" concern in mandating a fee was to recoup at least a part of the costs incident to these demonstrations. Ward, 491 U.S. at 791, citing, Renton v. Playtime Theaters, 475 U.S. 41, 47-48 (1986). The Movement does not seriously dispute this fact but opposes any fee for any purpose. See Respondent's Brief in Opposition to Petition for Certiorari @ 4, fn. 4.

The County also has a substantial interest in recouping a portion of the costs expended in hosting demonstrations. Any recovery would satisfy, in part, the County's recoupment goal. "The concept of public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary." City Council of Los Angeles, 466 U.S. at 805 (1983), citing, Berman v. Parker, 348 U.S. 26, 32-33 (1954) (emphasis added). Governmental entities must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems. Ordinance 34, including its fee provision, is narrowly tailored to affect only those activities which produce unwanted secondary effects (i.e. extraordinary costs). Renton, 475 U.S. at 52.

Further, ample alternative channels of communication with which to spread the Movement's message have been and are available to the Movement and its affiliate, the Defense League. See Statement of Facts supra at 5. The requirement of a permit only arises

if demonstrations or parades on "public property or public roads in the unincorporated areas of Forsyth County..." are sought. P.C. App. @ 103. This restriction does not limit the Movement's right to demonstrate or rally on city property, city streets, or on private property, all of which the Movement or its affiliate has done, or to hold regular free meetings in county courthouse meeting rooms. See Statement of Facts supra at 5.

Communication is equally effective at a rally or meeting held on city or private property or in a county courthouse meeting room as on county courthouse steps or county roads. Merely because an applicant for a permit desires free access to a particular forum for communication does not entitle him to the award of such right. He is entitled to the forum, but not necessarily without cost. "The inquiry for First Amendment purposes is not concerned with economic impact." Renton, 475 U.S. at 54, citing, Young v. American Mini-Theaters, 427 U.S. 50, 78 (1976) (Powell, J., concurring).

The evolution of the modern time, place and manner decisions has revealed the inherent wisdom of Cox. As long as the regulations are applied evenly and equally to everyone (i.e. are content-neutral), and the regulations serve legitimate and significant government interests (i.e. reimbursement for policing and administrative costs) and as long as there is freedom to express the ideas desired in alternative forums if there is reluctance to comply with the regulations (i.e. alternative

channels of communication), then a time, place and manner regulation, such as Ordinance 34, offends no constitutional protections.

C. The Application of Ordinance 34 to the Movement Was Eminently Reasonable and Well Within the Guidelines Set by This Court's Decision in Cox.

This Court should not lose sight of the fact that the permit was available to the Movement in this case upon their payment of $100.00 as opposed to the potential maximum fee of $1,000.00 under Ordinance 34. See Statement of Facts supra at 8. The $100.00 was calculated based on the time spent by the County Administrator for his time in processing the application, coordinating with other county officials, and communicating with the Movement and its representatives. See Statement of Facts supra at 9-10. The $100.00 fee represented an intentional reduction of the amount otherwise appropriate to reimburse the County for the time spent by the Administrator dealing with the Movement's application for a permit.[8] Therefore, any concern that the content of the Movement's message resulted in an enhanced fee is groundless; in fact, the Administrator and the County bent over backwards in an effort to be as fair and equitable with the Movement's requests as Ordinance 34

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8 See U.S. v. Codd, 527 F.2d 118 (2d Cir. 1975).

would permit. This concern with fairness resulted in the amount being set at the same amount as was previously assessed against the Movement when they had requested a permit the previous year. See Statement of Facts supra at 9, fn. 4.

Forsyth County went to great lengths when adopting Ordinance 34, particularly its fee aspect, in order to draft it in a form which would be clearly acceptable to any court reviewing it pursuant to a First Amendment challenge. In applying Ordinance 34 to the Movement, the county attempted to avoid violating Eleventh Circuit precedent, which it felt at the time was out of line with this Court's holding in Cox. See Central Florida, supra. In order to avoid any accusation of application of Ordinance 34 based on content, the fee was deliberately reduced below an amount which would have been valid based on the time spent by the County Administrator. Indeed, only the Administrator's time and no clerical staff time was used to calculate the amount of the fee. Notwithstanding all of these efforts, and perhaps as a result of the naivete of county officials, the Movement has attacked Ordinance 34 because the potential $1,000.00 maximum fee, although less in actual value than the $300.00 maximum fee in Cox would have totalled in 1989, has been held to be other than a "nominal amount" by the Eleventh Circuit; the Movement has attacked the actual fee because they say that the $100.00 amount, little as it is, reflects the county's disagreement with its message; and, worst of all,

the case from this Court upon which the fee provision is based, Cox, is attacked as outmoded, out of date, and of suspect validity in view of modern free speech decisions. See Central Florida, 774 F.2d at 1522.

The County contends that if any of these asserted weaknesses are upheld by this Court, then local government will be at the mercy of those who wish to spread their message at any time, at any place, and at a limitless cost to local government. The County does not expect this Court to leave local government in that position and urges this Court to reaffirm the wisdom and validity of Cox and any ordinance enacted based on its reasoning and within its restrictions.

D. Murdock Does Not Limit Permit Fees to a Nominal Sum And Does Not Prohibit Assessment of a Permit Fee to Offset Costs Incident to the Administration of Ordinance 34.

In 1943, two years after this Court approved regulatory fees in Cox, this Court reviewed an ordinance of the City of Jeannette, Pennsylvania, which required solicitors or persons delivering various types of merchandise to procure a license to transact said business and pay a set fee based on the duration of the solicitations or deliveries. Murdock v. Pennsylvania, 319 U.S. 105 (1943). Petitioners in that case were, as in Cox, Jehovah's Witnesses. They went about the City of Jeannette distributing literature and soliciting people to purchase certain religious books and pamphlets

published by the Watch Tower Bible and Track Society. None of the Petitioners had obtained a license under the ordinance and were arrested after sales of books.

Justice Douglas, writing for a five justice majority, determined that such activities constituted evangelism which was entitled to protection under the First Amendment to the United States Constitution. Murdock, 319 U.S. at 108. Having made that determination, Justice Douglas stated that the case presented a single issue: "The constitutionality of an ordinance which as construed and applied requires religious colporteurs to pay a license tax as a condition to the pursuit of their activities." Id. at 110 (emphasis added). Justice Douglas found that the tax under consideration was analogous to a tax on a preacher for the privilege of delivering a sermon. Id. at 112. He determined that the tax imposed was a "flat license tax, the payment of which is a condition of the exercise of ....constitutional privileges." Id. Justice Douglas expressly recognized that the fee being reviewed was not a nominal fee "imposed as a regulatory measure to defray the expenses of policing the activities in question." Id. at 114. He noted that "[i]t is in no way apportioned." Id.

The Court concluded that "the present ordinance is not directed to the problems with which the police power of the State is free to deal." Id. at 116. Justice Douglas explicitly noted that, "as we did in Cox v. New Hampshire, supra, and Chaplinsky v. New Hampshire, [315 U.S. 568 (1942)], [we do not review] state regulation

of the streets to protect and insure the safety, comfort, or convenience of the public." Id. And, in the language which has caused the issue before the Court in this case, Justice Douglas stated:

> and the fee is not a nominal one, imposed as a regulatory measure and calculated to defray the expense of protecting those on the streets and at home against the abuses of solicitors. See, Cox v. New Hampshire, supra, 312 U.S. at pgs. 576, 577.

Murdock, 319 U.S. at 116-117.

Justice Douglas took great care to distinguish the holding in Murdock from the regulatory fee approved in Cox. In Murdock, the Court was faced with a flat tax operating as a revenue raising measure on an activity the Court found was protected expression. The Court in Murdock freely acknowledged the difference between such a flat fee taxing protected expression and a sliding fee to defray the cost of administrative and policing costs on publicly owned property. The use of the word "nominal" was unfortunate but is wholly unrelated to the holding in Murdock. In sum, Murdock does not modify the Court's holding in Cox but recognizes that Cox involved a different kind of fee necessitated by obligations cast upon government by those wishing to engage in expressive conduct on public property.

E. The Eleventh Circuit Is Out of Step With the Proper Reasoning Applied by Other Circuit Courts of Appeals.

With the exception of the Eleventh Circuit Court of Appeals, every circuit court facing the issue presented by this case has recognized the distinction between the tax struck down in Murdock and the fee in Cox. See South Suburban Housing Center v. Board of Realtors, 935 F.2d 868, 989 (7th Cir. 1991), reh'g denied, 1991 U.S. App. Lexis 20783 (7th Cir. 1991), cert. denied, 60 U.S.L.W. 3520 (1992), (city failed to affirmatively demonstrate the specific costs it incurred in administrating its ordinance regulating "for sale" signs meant that there was not the required relationship between the permit fee and the ordinance's purpose); Stonewall Union v. City of Columbus, 931 F.2d 1130, 1136 (6th Cir. 1991) (no evidence that the fees were charged for anything other than processing costs and traffic control or that the fees were excessive or unreasonable), cert. denied, 112 S.Ct. 275 (1991); Eastern Connecticut Citizens Action Group v. Powers, 723 F.2d 1050, 1056 (2d Cir. 1983) (license fee invalidated because plaintiffs failed to show that the fee charged was equal to the administrative costs incurred); Fernandez v. Limmer, 663 F.2d 619, 633 (5th Cir. 1981) (licensing fee to be used in defraying administrative costs is permissible if not in excess of costs of administration), cert. dismissed, 458 U.S. 1124 (1982); Baldwin v. Redwood City, 540 F.2d 1360, 1372 (9th Cir. 1976) ("In some circumstances a city may both require a permit for activity involving free expression without violating the First Amendment and also collect fees that fairly reflect

costs incurred by the city in connection with such activity."), cert. denied, 431 U.S. 913 (1977). See also Kaplan, 894 F.2d 1076 (9th Cir.) cert. denied, 110 S.Ct. 2590 (1990).

The Eleventh Circuit is simply out of step with jurisprudence regarding this issue. This Court should reaffirm its holding in Cox, which many circuit courts have properly construed in order to maintain the authority of local government to charge reasonable fees for the administrative and policing costs associated with the utilization of public property for expressive purposes.

Apparently, the Eleventh Circuit simply chooses to ignore the authority granted to local governments by this Court in Cox to offset policing costs by the assessment of fees for uses of public property for expressive purposes. Central Florida Nuclear Freeze Campaign v. Walsh, 774 F.2d 1515, 1523 (11th Cir. 1985), cert. denied, 475 U.S. 1120 (1986). The Eleventh Circuit is apparently concerned a fee charged for policing, even though facially content-neutral, might not be applied in a content-neutral manner because of the enhanced cost associated with policing expressive activity which would generate potentially violent reactions from those not receptive to the message of the demonstrators. See Central Florida, 774 F.2d at 1524-1525. This concern recognizes the classic "heckler's veto" of which the Movement complains so loudly. However, contrary to the ordinance considered by the Eleventh Circuit in Central Florida, Ordinance 34 limits fees to no more

than $1,000.00, an amount already held to be reasonable by this Court in Cox. See fn. 7, supra at 25. In fact, the Movement was only charged a $100.00 fee in this case.

The Sixth Circuit Court of Appeals in Stonewall Union properly rejected an attack on a Columbus, Ohio ordinance which allowed that city to assess fees for expected police activities relating to traffic control. While affirming the Columbus ordinance, the Sixth Circuit stated that it "has repeatedly rejected the restriction of expression protected by the First Amendment based on a fear of violence." Stonewall Union, 931 F.2d at 1135. Like the Columbus ordinance, Ordinance 34 simply is not concerned with the content of any speech. It only requires payment of a fee for reimbursement of policing costs and administrative costs related to the expression of ideas by the applicant for a permit. As this Court has stated, as long as alternative channels of communication are available, there is nothing to restrict a permit fee to offset the costs as approved by this Court in Cox. Ward, 491 U.S. 781 (1989).

Ordinance 34 imposes a responsibility for payment for costs incurred in administering the application for a license permit and policing the activity itself, without imposing a prohibition upon the expression of views, regardless of their conduct. Thus, there can be no finding that Ordinance 34 is unconstitutional because the license fee might be based in part upon fear of violence from those who disapprove of the speaker's

message in the activity licensed. This is especially true given the $1,000.00 cap on the license fee which was incorporated into Ordinance 34 consistent with this Court's guidance in Cox.

The County's position is bolstered by this Court's language in Ward, 491 U.S. at 791, where this Court noted that "[a] regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others. Governmental regulation of expressive activity is content-neutral so long as it is justified without reference to the content of the regulated speech." (citations omitted).

In conclusion, Ordinance 34 is facially constitutional because it tracks this Court's observations and commands in Cox, is content-neutral, is narrowly tailored to serve a significant government interest, and leaves open ample alternative channels for communication of information. Ward, 491 U.S. at 791.

F. The Concept of User Fees Has Been Recognized by This Court in Such Diverse Constitutional Settings as Intergovernmental Immunities, the Dormant Commerce Clause and First Amendment Cases.

This Court recently applied the principles set down in Cox to another constitutional context. In Massachusetts v. United States, 435 U.S. 444 (1978), the State of Massachusetts brought a constitutional claim

asserting that the assessment of the annual registration tax on all civil aircraft flying in the navigable air space of the United States, as applied to aircraft owned by the State and used exclusively for police functions, violated the immunity of State government from federal taxation. The tax was proportional in that it was based on the type and weight of the aircraft and, while expected to produce only modest revenues, was considered by Congress to be an integral and essential part of the network of user charges. Id. at 450-451. This Court determined that the tax operated as a user fee and could constitutionally be applied to the state as long as the fee was closely related to the federal interest in recovering costs from those who benefit and since it effected no greater interference with state activities than did numerous restrictions which this Court had approved in the past. Id. at 461-462.

> A government body has an obvious interest in making those who specifically benefit from its services pay the cost and, provided that the charge is structured to compensate the government for the benefit conferred, there can be no danger of the kind of interference with constitutionally valued activity that the [Supremacy and Commerce] Clauses were designed to prohibit.

Id. at 462-463.

The Court's reference to the Commerce Clause refers to a line of cases best represented by

Evansville-Vanderburgh Airport Authority v. Delta Air Lines, Inc., 405 U.S. 707 (1972), where the court approved a one dollar head tax on enplaning commercial air passengers in the face of an attack brought pursuant to the Commerce Clause. The Court upheld that user fee since it was designed to recoup the cost of airport facilities.

The distinction recognized by this Court between a fixed user fee and a flat tax assessed without regard to cost of services provided distinguishes the decisions in Massachusetts v. United States, Evansville-Vanderburgh Airport and Cox from the decision in Murdock. The Court in Murdock recognized this distinction. Murdock, 319 U.S. at 113 (a license tax imposed for the "privilege" of carrying on interstate commerce or engaging in activity protected by the First Amendment is prohibited). A fixed fee will be upheld as long as there is no discrimination against constitutionally protected activities (state functions, interstate commerce or First Amendment freedoms), the fee is based on a fair approximation of the use caused by the activity and is structured to produce revenues that would not exceed the cost to the fee assessor for the benefits

supplied by it. Massachusetts v. United States, 435 U.S. at 464-467.[9]

The user fee concept, although offensive in principle to those who desire unbridled freedom to say anything they want anywhere they wish, is a valid concept which supports and maintains the principle initiated by this Court in Cox: that local government may impose regulations in order to assure the safety and convenience of its citizens in the use of its property in order to safeguard the good order upon which civil liberties ultimately depend. Cox, 312 U.S. at 574. Therefore, the analogy of the Cox principles to user fees approved by this Court in Massachusetts v. United States and Evansville-Vanderburgh Airport Authority is relevant, appropriate, and serves a secondary basis for upholding Ordinance 34 as facially constitutional.

III. CONCLUSION

For the reasons stated, Forsyth County respectfully requests that this Court reverse the decision of the Eleventh Circuit holding Ordinance 34 unconstitutional on its face, hold that Ordinance 34 is constitutional as applied to the Movement, and remand

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9 Petitioner notes that the Sixth Circuit in Stonewall Union upheld a flat administrative fee of $85.00 assessed against anyone requesting a permit which required administrative effort on behalf of the city. The court there found that the permit, although a flat fee, was directly apportioned to the administrative costs of processing the permit application. Stonewall Union, 931 F.2d at 1133. In any event, there is no flat fee assessed by Petitioner pursuant to its Ordinance.

this case to the Eleventh Circuit Court of Appeals with directions to affirm the opinion handed down by the United States District Court for the Northern District of Georgia.

Respectively submitted this 14th day of February, 1992.

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